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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

## In re College Athlete NIL Litigation

Case No. 4:20-cv-03919-CW

## **DECLARATION OF DAVID FLORES**

1. I currently serve as the Vice President – Governance for The Big 12 Conference, Inc. (the “Big 12”), located in Irving, Texas. I make this declaration of my own personal knowledge and, if necessary, could testify competently under oath to the facts set forth herein.

2. I have held my current position since September of 2022 after serving as Associate Commissioner for Compliance and Governance for the Big 12 beginning in October of 2019. In this role, I oversee and coordinate all matters related to NCAA and Big 12 governance, serve as the

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1 liaison to the Conference Faculty Athletics Representatives, directors of student-athlete support  
2 services, as well as leading all efforts regarding the Big 12's Student-Athlete Advisory Committee.  
3 I also oversee the Big 12 academic awards program.

4       3. Before joining the Big 12, I served as the director of student-athlete support services  
5 for Texas State University and previously served as associate athletic director for compliance  
6 services at Kansas State University, compliance coordinator for the University of New Mexico,  
7 athletic academic advisor for football and men's basketball at Texas Tech University, and as the  
8 program coordinator for athletic academic services at the University of Texas – El Paso ("UTEP").

9       4. I obtained my bachelor's degree from UTEP, and as an undergraduate, I played  
10 varsity football.

11       5. The mission of the Big 12 as stated in Section 1.3.1 of its Bylaws is to:  
12           a. Advance standards of scholarship, sportsmanship and equity consistent with the  
13              highest ideals of conference membership;  
14           b. Support the development of national-championship caliber intercollegiate athletic  
15              programs;  
16           c. Organize, promote, and administer intercollegiate athletics among its member  
17              institutions;  
18           d. Optimize revenues and provide supporting services compatible with both academic  
19              and competitive excellence; and  
20           e. Encourage collaborations in areas beyond athletics that builds good-will between  
21              institutions and promotes the overall missions of the universities.

22       6. The Big 12 currently has 10 members, including Baylor University, Iowa State  
23 University, the University of Kansas, Kansas State University, the University of Oklahoma,  
24 Oklahoma State University, Texas Christian University, the University of Texas – Austin, Texas  
25 Tech University, and West Virginia University.

26       7. The Bylaws and the Rules establish and define the roles of other governance  
27 groups that report directly or indirectly to the Board, including the Athletics Directors, the

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1 Faculty Athletics Representatives, the Senior Women Administrators, and groups representing  
2 other key constituencies.

3       8. I understand that the Plaintiffs' expert witnesses in this case have opined that in the  
4 absence of NCAA rules preventing it, each A-5 conference defendant would have, at least since the  
5 fall semester of 2016, paid certain student-athletes a portion of the rights fees paid to the A-5  
6 conferences under contracts with its media partners (such as ESPN/ABC or FOX) as compensation  
7 for the use of the student-athletes' name, image, and likeness ("NIL") rights. Specifically, as I  
8 understand it, Plaintiffs' expert witnesses think that A-5 conferences, including the Big 12, would  
9 have made NIL payments to student-athletes as follows:

- 10           a. Each conference would determine the total broadcast rights fees received from  
11           media partners, the College Football Playoff, and the NCAA men's basketball  
12           tournament.
- 13           b. Each academic year, all scholarship football players at conference member  
14           institutions would be paid an equal share of 10% of the conference's broadcast rights  
15           fees that Plaintiffs contend are attributable to football, which is 75% of unsegregated  
16           rights fees, or 7.5% of the conference's total rights fees.
- 17           c. Each academic year, all scholarship men's basketball players at conference member  
18           institutions would be paid an equal share of 10% of the conference's broadcast rights  
19           fees that Plaintiffs contend are attributable to men's basketball, which is 15% of  
20           unsegregated rights fees, or 1.5% of the conference's total rights fees.
- 21           d. Each academic year, all scholarship women's basketball players at conference  
22           member institutions would be paid an equal share of 10% of the conference's  
23           broadcast rights fees that Plaintiffs contend are attributable to women's basketball,  
24           which is 5% of unsegregated rights fees, or 0.5% of the conference's total rights  
25           fees.

1       9. I also understand that Plaintiffs' expert witnesses assume that 5% of the value of  
2 unsegregated broadcast rights fees a conference receives are attributable to the remaining games  
3 and events that the conference sponsors.

4       10. As an example, under Plaintiffs' damages model (the Model), for an A-5  
5 conference receiving \$100 million in broadcast rights fees annually, Plaintiffs' expert witnesses  
6 suppose that the A-5 conference would have attributed \$10 million among scholarship student-  
7 athletes as follows: (1) \$7.5 million divided in equal shares among all football players; (2) \$1.5  
8 million divided in equal shares among all men's basketball players; (3) \$500,000.00 divided in  
9 equal shares among all women's basketball players.

10      11. I further understand that, under the expert witnesses' Model and as a matter of  
11 mathematics:

- 12       a. Larger portions of the broadcast rights revenues are attributable to each student-  
13            athlete in conferences with fewer members;
- 14       b. Larger amounts of the broadcast rights revenues are attributable to each student-  
15            athlete in conferences with higher broadcast rights revenues;
- 16       c. Equal portions of broadcast rights revenues are attributable to athletes who are high-  
17            performing starters and low-performing athletes who rarely or ever play in a game;
- 18       d. Larger amounts of broadcast rights revenues are attributable to each men's  
19            basketball player than each football player at a conference member as a result of the  
20            difference in the number of scholarships available in football and men's basketball;  
21            and
- 22       e. Much smaller amounts of broadcast rights revenues are attributable to each women's  
23            basketball player than either each men's basketball player or each football player at  
24            a conference member.

25      12. Based on my experience, if payments like those proposed in the Model were  
26 permitted, I would not support such a proposal. In addition, I do not believe that the Big 12 would  
27 adopt such a proposal.

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1        13. A critical goal of the Big 12 is providing opportunities for student-athletes to  
2 participate in college sports. Conference members work with limited resources to maximize those  
3 opportunities. The Model proposes that a significant portion of members' resources be redirected  
4 to a small percentage of our student-athletes, but it does not identify any supplemental revenues to  
5 offset lost resources. The Model could place extreme pressure on members' budgets, and it may  
6 result in the elimination of some programs.

7       14. The Model would also put the Big 12 at a substantial disadvantage in attracting the  
8 most talented student-athletes. Based on publicly-reported information, the Big 12's broadcast  
9 revenues are somewhat less than some other A-5 conferences with which Big 12 member  
10 institutions compete for top athletic talent. The Model requires each A-5 conference to provide the  
11 same percentage of its broadcast revenues to student-athletes; because the Big 12's revenues are  
12 lower, the payments it can offer student-athletes would be lower.

13        15. The Model could also place additional financial pressures on Big 12 members to,  
14 for example, reduce the number of players per team, reduce the number of teams per member, and  
15 reduce conference membership. Perhaps most important, the Model would mandate uniformity on  
16 institutions that have historically had independent authority to determine for themselves how to  
17 best allocate their revenues and resources.

18        16. Finally, the Model causes me substantial concerns about disparate treatment that  
19 would negatively impact women's sports. The Model requires over 90% of revenues to be paid to  
20 male student-athletes. This is incompatible with the Big 12's gender equity values.

  
David Flores  
Signed April 24, 2023

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